

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

CLEANUP AND ABATEMENT ORDER NO. R5-2006-0710

FOR

VIRGINIA L. DRAKE, TRUSTEE, DRAKE REVOCABLE TRUST, DARWIN H.
AND NINA R. SIMMONS TRUSTEES, SIMMONS FAMILY TRUST, AND JAMES
E. SIMMONS
HUMBOLDT ROAD BURN DUMP AREA 7
ASSESSORS PARCEL NUMBER 018-390-018
BUTTE COUNTY

This Cleanup and Abatement Order (hereafter Order) is issued to Virginia L. Drake, Trustee, Drake Revocable Trust (hereafter Drake Trust), Darwin H. and Nina R. Simmons, Trustees (hereafter Simmons Family Trust), and James E. Simmons (hereafter Simmons) (jointly hereafter Dischargers) based on provisions of California Water Code Section 13304, which authorizes the Central Valley Regional Water Quality Control Board (Central Valley Water Board) to issue an Order.

The Central Valley Water Board finds, with respect to the Dischargers' acts or failure to act, the following:

1. The Humboldt Road Burn Dump (HRBD) is a contiguous collection of 15 parcels containing, in whole or in part, waste from the disposal of municipal and/or commercial operations that contains waste as defined in California Water Code (CWC) section 13050 and hazardous materials as defined in Health and Safety Code section 25260(d). Studies conducted of the HRBD, under contract to the City of Chico, described eight HRBD investigation areas, characterized the waste, delineated the extent, and confirmed the need for further remediation on several parcels. Studies show that the HRBD had waste containing lead exceeding hazardous waste levels in some locations and significant other hazardous and non-hazardous waste constituents that pose a threat to human health and the environment, including waters of the state.
2. The Central Valley Water Board Executive Officer issued Cleanup and Abatement Order No. 88-700 (hereafter "1988 CAO") and Cleanup and Abatement Order No. R5-2003-0707 (hereafter "2003 CAO") requiring cleanup of the HRBD. The 1988 CAO only addresses one HRBD parcel (Area 8), whereas the 2003 CAO addresses all 15 HRBD parcels.
3. The 2003 CAO defines HRBD by the following parcels and their respective owners: APN 002-180-095 and 011-030-137 (City of Chico); APN 011-030-136, 011-030-138, 011-030-139 (Thomas and Mary Fogarty Revocable Trust); APN 011-030-015 (George Scott Revocable Trust, County of Butte);

- APN 011-030-016 (Edmond and Julie Johnson); APN 002-180-089 (Donald and Yvonne Mulkey Family Trust); APN 002-180-084 (Fred and Helen Bartig Family Trust et al.); APN 002-180-086 (Marilyn Adams Revocable Trust et al.); APN 011-780-014 (Simmons Family Trust); APN 011-780-018 (Drake Revocable Trust et al.); APN 002-180-087 and 002-180-088 (Chico Development Corporation); and APN 002-180-083 (Pleasant Valley Assembly of God). North Valley Disposal Service is also named in the 2003 CAO because they caused waste to be discharged at HRBD.
4. The following 13 HRBD parcels have been cleaned up in compliance with the 2003 CAO: APN 002-180-095 and 011-030-137 (City of Chico); APN 011-030-136, 011-030-138, 011-030-139 (Thomas and Mary Fogarty Revocable Trust); APN 011-030-015 (George Scott Revocable Trust, County of Butte); APN 011-030-016 (Edmond and Julie Johnson); APN 002-180-089 (Donald and Yvonne Mulkey Family Trust); APN 002-180-084 (Fred and Helen Bartig Family Trust et al.); APN 002-180-086 (Marilyn Adams Revocable Trust et al.); APN 002-180-087 and 002-180-088 (Chico Development Corporation); and APN 002-180-083 (Pleasant Valley Assembly of God). The following two HRBD parcels were not cleaned up: APN 011-780-018 (Drake Revocable Trust, et al.) (Area 7) and APN 011-780-014 (Simmons Family Trust, et al.) (Area 8). This Order revises the 2003 CAO to require cleanup of Area 7 in Summer 2006 and to delete as responsible parties those parties whose parcels are now cleaned up.

OWNERSHIP AND OPERATIONAL HISTORY
Assessors Parcel Number 018-390-018 (Area 7)

5. Currently, Assessors Parcel Number (APN) 018-390-018 consists of 7.13 acres of essentially unimproved land near the intersection of Stilson Canyon and Humboldt Roads, in Chico, California. In the past, the land was part of a larger unimproved parcel; specifically, APN 018-390-018 was part of APN 011-780-010, and before that was part of the 98.5-acre parcel APN 011-050-116. APN 018-390-018 is also referred to as Area 7 of the HRBD.
6. Prior to 1978, Shimizu Bros., Inc., a California corporation, owned $\frac{1}{2}$ undivided interest, James E. Simmons owned $\frac{1}{4}$ undivided interest, and Darwin H. Simmons owned $\frac{1}{4}$ undivided interest in approximately 7,000 acres of essentially unimproved land that included Area 7. In 1978, John D. Drake purchased $\frac{1}{4}$ of the interest owned by Shimizu Bros, Inc. Subsequently, in 1983, John D. Drake purchased the remaining $\frac{1}{4}$ interest from Shimizu Bros, Inc., and thereafter owned $\frac{1}{2}$ interest in the land. On 23 January 2001, John D. Drake deeded his $\frac{1}{2}$ interest in the land to himself and Virginia L. Drake as trustees of the Drake Revocable Trust. John D. Drake died on 22 November 2001.
7. A battery recycling facility is suspected of having operated on APN 018-390-018.

- Historic aerial photographs taken of the suspected battery recycling facility indicate that from, 1937 until 1962, small structures were visible that are consistent with that type of operation. No structures are visible in Area 7 in photographs taken in 1975. Based on the current record of the Central Valley Water Board, the owners and operators of the suspected battery recycling facility are unknown.
8. On 23 March 2000, as part of the City of Chico's HRBD investigation, soil samples were collected from Area 7. The analyses detected lead at concentrations ranging from 27.9 mg/Kg to 8,340 mg/Kg, and pH ranging from 6.05 to 6.88 units.
 9. In December 2004 and January 2005, additional soil samples were collected from Area 7 as part of Drake Trust's investigation. The analyses detected lead at concentrations ranging from 4.3 mg/Kg to 3,920 mg/Kg, and pH ranging from 5.64 to 7.03 Units. The concentrations of leachable lead in 4 soil samples, using the Toxicity Characteristic Leaching Procedure (TCLP), ranged from <0.1 mg/L to 9.49 mg/L. The hazardous waste total threshold count concentration for lead is 1000 mg/Kg; the TCLP is 5mg/L. The estimated volume of waste in Area 7 that exceeds the HRBD lead remedial action goal, 240 mg/Kg, is 500 cubic yards.
 10. APN 018-390-018 is currently owned by Virginia L. Drake, Drake Revocable Trust, Darwin H. Simmons, Nina R. Simmons, Simmons Family Trust, and James E. Simmons. Virginia L. Drake, through the Drake Revocable Trust established with her deceased husband, John D. Drake, owns an undivided $\frac{1}{2}$ interest, James E. Simmons owns an undivided $\frac{1}{4}$ interest, and Darwin H. Simmons and Nina R. Simmons, through the Simmons Family Trust, own an undivided $\frac{1}{4}$ interest in APN 018-390-018.
 11. Virginia L. Drake, Drake Revocable Trust, Darwin H. Simmons, Nina R. Simmons, Simmons Family Trust, and James E. Simmons, as current owners of APN 018-390-018 (Area 7), have knowledge of the discharge, which is continuing, and the ability to control it and, therefore, caused or permitted, causes or permits, or threatens to cause or permit, the discharge of Area 7 waste where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance. Virginia Drake, Drake Revocable Trust, Darwin H. Simmons, Nina R. Simmons, Simmons Family Trust, and James E. Simmons are jointly and severally responsible for cleanup of Area 7 under this Order.
 12. Based on the current record of the Central Valley Water Board, it appears that neither the City of Chico, County of Butte, North Valley Disposal nor any of the other named parties in the 2003 CAO, ever owned the land, or caused or permitted the discharge of waste in Area 7, that is the subject of this Order. Shimizu Bros, Inc., is not named in this Order because the current record indicates

that, although they were a former property owner, they had no knowledge of the waste discharge. This Order may be revised if new evidence identifies additional responsible parties for the Area 7 waste.

BACKGROUND

13. On 13 February 2004, Drake Trust submitted to Central Valley Water Board staff a notice of intent to be lead responsible party for purposes of investigation and cleanup, and reimbursement of Central Valley Water Board staff oversight costs for Areas 7 and 8.
14. To comply with the 2003 CAO, the Drake Trust and other private parties submitted a Final Remedial Action Plan (RAP) for Humboldt Road Private Properties Operational Unit that includes Areas 7 and 8 and seven other parcels. The RAP evaluated three alternatives: no action, excavation and off-site disposal, and consolidation and capping for Areas 3, 5, and 6. The approved RAP identifies excavation and off-site disposal as the most cost-effective means to meet the cleanup objectives for Areas 7 and 8. The approved RAP did not evaluate consolidation and capping for Areas 7 and/or 8.
15. On 8 July 2004, the Central Valley Water Board Executive Officer certified the Final Environmental Impact Report (EIR), Humboldt Road Private Properties Operational Unit, SCH #2004042024, and approved the RAP described in Finding 14. The EIR evaluated the potential environmental impacts from excavation and off-site disposal of waste from Areas 7 and 8 to nearby HRBD disposal sites, which are no longer accepting HRBD waste, and off-site disposal of waste to other permitted facilities.
16. It is the intent of this Order that the parties responsible for the waste to work together and cooperate in sharing resources and obtaining permits to control costs, coordinate regulatory oversight, and develop a common solution beneficial to all.

AUTHORITY – LEGAL REQUIREMENTS

17. The Central Valley Water Board's *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, 4th Edition* (hereafter Basin Plan) designates beneficial uses of the waters of the State, establishes water quality objectives (WQOs) to protect these uses, and establishes implementation policies to implement WQOs.
18. The beneficial uses of the groundwater beneath the site are domestic, municipal, industrial, and agricultural supply.
19. Applicable water quality objectives for surface water include a narrative toxicity objective and specific numeric objectives.

20. The constituents listed in Findings No. 8 and 9 are wastes as defined in California Water Code Section 13050.
21. The Area 7 wastes are in concentrations that do not occur naturally. Rain may result in erosion of the Area 7 waste into an unnamed tributary, and a portion, of Dead Horse Slough that was cleaned up in 2005 (APN 011-030-137, 011-030-136, 002-180-084, and 002-180-086), and may cause pollution. Wind may result in dispersion of the Area 7 waste into the air. Although the Area 7 waste is fenced and posted, it also creates a condition of nuisance.
22. The Dischargers have caused or permitted waste to be discharged or deposited where it threatens to discharge to waters of the state and threatens to create a conditions of nuisance due to accessibility of the property and presence of hazardous waste levels of lead.
23. Section 13304(a) of the California Water Code provides that:

“Any person who has discharged or discharges waste into waters of the state in violation of any waste discharge requirements or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the Regional Board clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including but not limited to, overseeing cleanup and abatement efforts. Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the request of the Regional Board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.”
24. As described in Finding No. 21, the Area 7 wastes threaten to discharge to waters of the state, and create a condition of nuisance, including posing a health threat to persons on or near the HRBD. As described in Findings No. 10 and 11, the Dischargers named in this Order have caused or permitted waste to be discharged or deposited where it has discharged, or probably will be discharged, to waters of the state, and has created or threatens to create a condition of pollution or nuisance.

25. Section 13267(b) of the California Water Code provides that:

“In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.”

The technical reports required by this Order are necessary to assure compliance with Section 13304 of the California Water Code. Existing data and information about the site indicates that waste has been discharged or is discharging at the property, which is owned and/or operated by the Dischargers named in this Order.

26. Section 13304(c)(1) of the California Water Code provides that:

“ . . . the person or persons who discharged the waste, discharges the waste, or threatened to cause or permit the discharge of the waste within the meaning of subdivision (a), are liable to that government agency to the extent of the reasonable costs actually incurred in cleaning up the waste, abating the effects of the waste, supervising cleanup or abatement activities, or taking other remedial actions. . . ”

27. The State Water Resources Control Board (hereafter State Board) has adopted Resolution No. 92-49, the *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304* (Resolution 92-49). This Policy sets forth the policies and procedures to be used during an investigation or cleanup of a polluted site and requires that cleanup levels be consistent with State Board Resolution 68-16, the *Statement of Policy With Respect to Maintaining High Quality of Waters in California*. Resolution 92-49 and the Basin Plan establish the cleanup levels to be achieved. Resolution 92-49 requires the waste to be cleaned up to background, or if that is not reasonable, to an alternative level that is the most stringent level that is economically and technologically feasible in accordance with Title 23, California Code of Regulations (CCR) Section 2550.4. Any alternative cleanup level to background must (1) be consistent with the maximum benefit to the people of the state; (2) not unreasonably affect present and anticipated beneficial use of such

- water; and (3) not result in water quality less than that prescribed in the Basin Plan and applicable Water Quality Control Plans and Policies of the State Board. Resolution 92-49 requires the cleanup to implement the applicable provisions of Title 23 CCR Division 3, Chapter 15. Title 23 CCR section 2550.4 requires consideration of the risks to public health of the discharge of waste.
28. This Order requires the Dischargers to cleanup and abate HRBD Area 7 in compliance with Resolution 92-49, other applicable state and local laws, and consistent with HSC Division 20, Chapter 6.8.
 29. If the Dischargers fail to comply with this Order, the Executive Officer may request the Attorney General to petition the superior court for the issuance of an injunction.
 30. If the Dischargers violate this Order, the Dischargers may be liable civilly in a monetary amount provided by the California Water Code.
 31. The issuance of this Order is an enforcement action taken by a regulatory agency and is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 21000, et seq.), pursuant to Title 14 CCR Section 15321 (a)(2).
 29. Any person affected by this action of the Central Valley Water Board may petition the State Board to review the action in accordance with title 23 CCR Sections 2050-2068. The regulations may be provided upon request and are available at www.waterboards.ca.gov. The State Board must receive the petition within 30 days of the date of this Order.

IT IS HEREBY ORDERED that Cleanup and Abatement Order No. R5-2003-0707 (2003 CAO) is revised, pursuant to California Water Code Division 7, including Section 13304 and Section 13267, to remove APN 002-180-095 and 011-030-137 (City of Chico); APN 011-030-136, 011-030-138, 011-030-139 (Thomas and Mary Fogarty Revocable Trust); APN 011-030-015 (George Scott Revocable Trust, County of Butte); APN 011-030-016 (Edmond and Julie Johnson); APN 002-180-089 (Donald and Yvonne Mulkey Family Trust); APN 002-180-084 (Fred and Helen Bartig Family Trust et al.); APN 002-180-086 (Marilyn Adams Revocable Trust et al.); APN 002-180-087 and 002-180-088 (Chico Development Corporation); APN 002-180-083 (Pleasant Valley Assembly of God); and North Valley Disposal Service from all requirements of the 2003 CAO.

IT IS ALSO HEREBY ORDERED that, pursuant to California Water Code Division 7, including Section 13304 and Section 13267, Virginia L. Drake, Trustee, Drake Revocable Trust (hereafter Drake Trust), Darwin H. and Nina R. Simmons, Trustees, Simmons Family Trust (hereafter Simmons Trust) and James E. Simmons (hereafter Simmons)(hereafter jointly Dischargers) shall:

Investigate the discharge of Area 7 waste, cleanup Area 7 waste, and abate the effects of Area 7 waste, forthwith, in conformance with State Water Resources Control Board Resolution No. 92-49 *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304* and with the Water Board's *Water Quality Control Plan for the Sacramento River and San Joaquin Basins* (in particular the Policies and Plans listed within the Control Action Considerations portion of Chapter IV), other applicable state and local laws, and consistent with HSC Division 20, chapter 6.8. "Forthwith" means as soon as is reasonably possible. Compliance with this requirement shall include, but not be limited to, completing the tasks listed below.

1. The Dischargers shall submit, by **15 May 2006**, written notification to the Central Valley Water Board that they agree to maintain Drake Trust, or have agreed to select another identified party as authorized representative for coordination, investigation, cleanup, and reimbursement of staff oversight costs for the Area 7 waste.
2. The Dischargers shall submit, by **15 May 2006**, a Revised Remedial Design and Implementation Plan (RDIP) containing technical/operational plans and engineering designs for implementing off-site disposal and a schedule for implementing the construction phase to cleanup the Area 7 waste by **15 August 2006**. The RDIP shall also include:
 - The nature and design of the construction equipment to be employed;
 - A site-specific hazardous waste transportation plan;
 - A traffic control plan;
 - The identity of any contractors, transporters and other persons conducting the remedial activities for the site;
 - Post-remedial sampling and monitoring procedures for air, soil, surface water and groundwater;
 - Operation and maintenance procedures;
 - Identification of all potential access requirements; and
 - A list of all necessary regulatory permits or authorizations, time schedule for submitting complete permit applications, and the date each permit or authorization must be received to cleanup the waste by **15 August 2006**.
3. The Dischargers shall cleanup and abate the Area 7 waste by **15 August 2006**.
4. The Dischargers shall notify Central Valley Water Board staff a minimum of 72 hours prior to beginning fieldwork.
5. On the 15th of each month, the Dischargers shall submit a status report on the progress of complying with this Order, explain any problems with compliance or delays in the schedules, and provide and plan for returning the cleanup to compliance with this Order. The first monthly status report shall be submitted to the Central Valley Water Board on **15 May 2006**.

GENERAL REQUIREMENTS

The Dischargers shall:

6. Reimburse the Central Valley Water Board for reasonable costs associated with staff oversight of the cleanup of Area 7. Failure to do so shall be considered a violation of this Order.
7. Document compliance with the California Environmental Quality Act as required.
8. Conduct work only after Central Valley Water Board staff concurs with the work plans.
9. Submit all reports with a cover letter from their authorized representative indicating that each of the Dischargers, as appropriate, concur with the reports.
10. Fourteen days prior to conducting any fieldwork, submit a Health and Safety Plan that is adequate to ensure worker and public safety during the field activities in accordance with California Code of Regulations, Title 8, Section 5192.
11. As required by the California Business and Professions Code Sections 6735, 7835, and 7835.1, have all reports prepared by, or under the supervision of, a registered professional engineer or geologist and signed by the registered professional. All technical reports shall include a statement signed by the authorized representative certifying under penalty of law that the representative has examined and is familiar with the report and that to their knowledge, the report is true, complete, and accurate.
12. Obtain all federal, state, and local permits and access agreements necessary to fulfill the requirements of this Order prior to beginning the work. Construction work shall not proceed prior to **2 June 2006**.
13. If, for any reason, the Dischargers are unable to perform any activity or submit any document in compliance with the schedule set forth herein, or in compliance with any work schedule submitted pursuant to this Order and approved by the Executive Officer, they may request, in writing, an extension of the time specified. The Extension request shall include justification for the delay. An extension may be granted only by revision of this Order.
14. If, in the opinion of the Executive Officer, the Dischargers fail to comply with the provisions of this Order, the Executive Officer may issue a complaint for administrative civil liability or refer this matter to the Attorney General for judicial enforcement.

This Order is effective upon the date of signature.

KENNETH D. LANDAU
Assistant Executive Officer

28 April 2006
(Date)

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